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C O N F I D E N T I A L SECTION 01 OF 02 NEW DELHI 007909

SIPDIS

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TAGS: [PGOV](#) [KDEM](#) [KJUS](#) [PHUM](#) [PREL](#) [IN](#)

SUBJECT: CONGRESS ON DEFENSIVE OVER SUPREME COURT DECISION

REF: NEW DELHI 7759

Classified By: Political Counselor Geoff Pyatt for Reasons 1.4 (B, D)

[11.](#) (C) Summary. On October 7, the Indian Supreme Courts ruled that the United Progressive Alliance (UPA) May 22 dissolution of the Bihar State Assembly and its declaration of President's rule was unconstitutional. However, the Court refused to cancel the October 18-November 19 state elections, stating that it did not want to interfere with an already scheduled contest. The decision energized the NDA, which had filed the suit, and the BJP leadership called for the resignation of the Bihar State Governor and the Prime Minister. Already reeling from criticism of its economic and foreign policy by opponents on the left and the right (Reftel) and thrown further on the defensive by the decision, Congress is likely to become more cautious in the weeks leading up to the Bihar vote. End Summary.

The Bihar Muddle

[12.](#) (U) The February 2005 State Assembly elections produced a three way split with no clear winner. Of Bihar's 243 seats, the BJP and its Janata Dal (United) allies won the largest number (92), while Congress (10 seats) and its Rashtriya Janata Dal(RJD) allies were close behind with 85 seats. The newly-formed Lok Janshakti Party (LJP) of Steel Minister Ram Vilas Paswan won 29 seats.

[13.](#) (U) When Congress and the RJD failed to cobble together a majority, Governor Buta Singh on May 21 recommended that the United Progressive Alliance (UPA) government dissolve the house and declare President's Rule. Prime Minister Manmohan Singh called the cabinet into session the same night to approve the Governor's recommendation and send it to President Abdul Kalam for ratification. In its suit, the NDA argued that New Delhi rushed to implement the Governor's recommendation to prevent JD(U) Chief and NDA candidate for Chief Minister Nitish Kumar from staking his own claim to form the Bihar government.

The Supreme Court Ruling

[13.](#) (U) On October 7, the Supreme Court ruled that President Kalam's order dissolving the Bihar assembly was unconstitutional. However, the court refused to reinstate the assembly or stop the election process already in motion. Expensive and cumbersome four stage state elections are scheduled to commence on October 18 and end on November 19. The Court argued that established procedures dictated that the courts not interfere with elections once they have been scheduled by the Election Commission. The Court also noted it will not be in session from October 8 until October 18, so it determined it would not have sufficient time to decide on the merits of canceling the election.

The Opposition is Jubilant

[14.](#) (U) The opposition BJP, which had filed the court case, welcomed the decision as a vindication of their stance that the UPA had acted in "indecent haste," and with a clear political motive. BJP General Secretary Arun Jaitley accused PM Singh of "misleading the country," declaring that "the prime minister and the Home Minister cannot escape responsibility. After all, it was the PM who misled the country." Another BJP General Secretary Pramod Mahajan stated that "either Buta Singh should tender his resignation or be sacked for recommending the dissolution." Nitish Kumar called for PM Singh's resignation as well, stating that "Dr. Singh should step down immediately. We stand vindicated. We had said the house was dissolved unconstitutionally and the Supreme Court has accepted our contention." Kumar confirmed that the NDA will make the Supreme Court Decision the centerpiece of its election campaign.

Congress Thrown on the Defensive

[15.](#) (U) The Supreme Court Judgment caught Congress and its UPA allies by surprise. PM Singh emphasized that "I do not disown my responsibility as Prime Minister," but refused further comment as "we still do not know the reasons behind the verdict," and said it was not fair to put all the blame

on Governor Singh. Congress President Sonia Gandhi defended Buta Singh from attacks that he was too subservient to Congress, saying disingenuously "I don't think that Governors are involved in politics." The Congress leadership is deliberating how to handle the issue, and there is increasing press speculation that Governor Singh could get his walking papers. Congress has been roundly criticized for manipulating pliable governors to dismiss non-Congress governments. The October 6 attempted assassination of senior BJP leaders Ravi Shankar Prasad while campaigning in Bihar, provided a further boost to the BJP campaign in the state. The party criticized the lack of security and emphasized that it would restore law and order. In addition to Bihar, Congress-installed governors seated UPA governments in Goa and Jharkhand.

Comment: Sailing in Turbulent Waters

16. (C) The Supreme Court decision comes when Congress ranks are already reeling from virulent criticism of the UPA's anti-Iran vote in IAEA and its modest yet delayed economic reform agenda. The Court decision has hurt the PM's "Mr. Clean" image and provided the opposition NDA with a ready-made issue that could revive its Bihar election campaign. Even before the decision, the UPA was losing confidence in Bihar and there was increasing talk of impending defeat. Congress now faces renewed attacks by the Communists on its Left and the a re-energized NDA on its right. The result will likely be a party and an alliance increasingly on the defensive, more cautious, and inclined to move slowly on economic and foreign policy issues the USG cares about.

17. (U) Visit New Delhi's Classified Website:
(<http://www.state.sgov.gov/p/sa/newdelhi/>)
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